

ADMINISTRATION TEAM MINUTES

Date: May 20, 2005
Time: 9:00 am
Place: Tacoma AGC Building

<u>Attending</u>	Mark Borton	___	Tim Hayner	___	Cathy Nicholas	✓
	Jerry Brais	✓	Ann Hegstrom	___	Ken Olson	✓
	Forrest Dill	✓	David Jones	✓	Mark Rohde	___
	Bob Glenn	✓	David Mariman	✓	Mark Scoccolo	✓
	Paul Gonseth	___	Craig McDaniel	✓	Dave Standahl	✓
	Mike Hall	___	Tina Nelson	✓	Greg Waugh	✓
	Tom Zamzow	___				

Opening Craig McDaniel opened with a brief rundown of his latest adventures. The use of Design/Build has become more prevalent in delivering projects. The Department has a lot of new work to deliver and will likely need to use more innovative methods, some of which may place more risk on the Contractor.

The minutes of the prior meeting were accepted without comment.

Roundtable The roundtable was skipped in the interest of time.

Misc. Business

It was proposed that WSDOT accept Construction Site Erosion and Sediment Control training provided by the Department of Ecology. The current Standard Spec requires the ESC Lead to be certified, "...from a course approved by WSDOT's Statewide Erosion Control Coordinator." The DOE course is currently not accepted. Craig McDaniel will look into acceptance of the DOE program.

Old Business - Section 1-08.5 Time for Completion

The draft version of Section 1-08.5 (attached) was distributed and was proposed for acceptance by vote of the Team. Some major changes to the provision included: half-days are included in the definition of unworkable day; the affect of weather conditions on

critical activities are the basis for “unworkable” determinations; “other reasons” are removed from the definition of unworkable day but are resolved in accordance with Section 1-08.8; start of contract time was extended because 10 days was too short for the amount of work required by the Contractor; contract time starts on the day the Contractor begins onsite work; working days statement are now protested in accordance with Section 1-04.5; Substantial Completion is recognized and Section 1-01.3 is referenced for the definition of all three completion milestones.

The Team unanimously accepted the spec as currently written, with an understanding that all of the revisions to Section 1-08 must be completed and conflicts resolved before Section 1-08.5 can be finalized.

New Business - Tort Claims

A draft provision (attached) was distributed for comment. The provision is a result of inaction toward Tort claims by some Contractors, and the intent of the provision is to motivate Contractor to pay or deny claims promptly. The provision permits the Department to pay Tort claims and withhold paid money from the Contractor, if the Contractor fails to respond to the claimant and notify the Department of the response within a certain time.

The Team provided comments that the State should notify the Contractor in writing prior to taking any action. This may avoid double payment or conflicting findings in cases where the Contractor mistakenly fails to notify the Department that it already addressed the claim. The clock should start from the date of receipt and certified mail could be used to determine that date. Regardless of whether the time limits to respond are 60 days or 70 days, they should be uniform and should not specify a different time limit for each type of response. Craig McDaniel will revise this as appropriate.

Fuel Escalation Clause

The WSDOT/AGC Industry Teams were polled in regard to whether WSDOT should develop a fuel escalation provision. The results are as follows:

Structures Team: among 9 contractors represented, 8 yes, 1 no

Roadway Team: among 7 contractors represented, 1 yes, 3 no

Admin Team: among 10 contractors represented, 2 yes, 1 no, 1 maybe

The poll was conducted by e-mail and indicated that there is no consensus that an escalation clause is needed. Written testimony echoed the varying views.

One member stated that the WAPA team was polled and voted unanimously against an escalation clause. Many contractors view cost escalation as part of the risk of doing business. Pavers have been burned by this provision in the past, as it is usually developed after the escalation has occurred and seems to result in a credit as the

pendulum swings the other way. Another member reported that 25 of 50 states had fuel escalation provisions in the year 2000. Yet another stated that there is no indication that escalating fuel prices have resulted in higher bid prices.

The result of the discussion was that the Team does not support a fuel escalation clause, and Craig McDaniel will report that recommendation.

Automated Flagger Assistance Device

A draft provision was distributed for comments. A new traffic control device that is similar to a traffic signal but (without the green lamp) and has a traffic arm (like a RR X-ings) is on the market and is approved in the 2003 MUTCD. The device can be operated remotely and is intended to replace the flagger, thus removing them from harms way. WSDOT may desire to test the device on a trial project and is seeking input.

The group noted that the device does provide a safety benefit, but will add cost to the project. It was also noted that a temporary signal provides the same benefit and is more recognized by public traffic. The Team was receptive to seeing a trial project utilize the device if they are provided by the Owner or are available for rental.

Section 1-08.5 (Alternate Shifts)

This effort needs a renewed focus. Is this appropriate for a Standard Specification? It could be a GSP if we know in advance what shift we would like to define. Generally, the Agency wants the contractor to decide what shift works best for them unless circumstances demand a specified shift. The State would want to have an option to approve a 7-day workweek because of staffing issues. The concept is legitimate but how to implement this undetermined. The group will need to readdress this.

Section 1-08.5 (Variable Start Date)

Variable start, Contractor controlled: This spec is designed for small jobs with short durations. Accepted without comment.

Variable start, State controlled: This spec is designed for start to be tied to some variable event. This should be enhanced to define a window of when contract time may start. It is undesirable to leave the start date undefined, potentially for months, and expect the contractor to be ready to go after only 10 days notice.

Fixed start, State controlled: This spec is designed for start to be tied to some fixed event. The two fill-ins for dates could be the same date but do not have to be the same. Section 1-08.4 will have to be modified to make this work.

Accelerated start: This condition is covered by the rewrite of the standard spec or existing GSP's. It is removed from the list of provisions to be addressed.

Dave Standahl will incorporate comments and resubmit.

Section 1-08.5 - Critical Materials Suspension

Jerry Brais has a draft of this spec and will circulate it prior to the next meeting.

Section 1-08.3 – Progress Schedule

The complex project provision is not fully developed. The Kirkland Design/Build project schedule is being touted as the model provision for this application. However, it is 9 pages long and too cumbersome. Perhaps other states may provide good sample provisions. Dave Mariman will provide a link to Forrest Dill for the web address of each state DOT.

Other Business – Charter Revision

The Team agreed to move the meeting date back to the second Friday of each month, to eliminate the Quality Round Table from the Agenda, and to schedule all future meetings from 9:am to noon. It was determined that attendance was light in the afternoons anyway, and eliminating the Round Table enhanced productivity.

The next meeting is scheduled for June 10th, with agenda items to follow. The meeting adjourned at 12:00 noon.

Subject Area	Sponsor
Section 1-08.3	Craig McDaniel
1-08.3 alternate simple job	Paul Gonseth
1-08.3 alternate complex job	Forrest Dill
Section 1-08.4	Mike Hall
Section 1-08.5	Paul Gonseth/Greg Waugh
Section 1-08.5 (sub) Critical Materials Spec	Mark Borton
Section 1-08.5 (sub) Variable Start Date	Dave Standahl
Section 1-08.5 (sub) Alternate Shifts (could be a family of specs)	Tim Hayner
Section 1-08.5 (sub) Work not Allowed (events, traffic, permit provisions)	Paul Gonseth

Section 1-08.6	Dave Jones
Section 1-08.7	Ann Hegstrom
Section 1-08.8	Mark Scoccolo
Review, Summarize Region Specials	Craig McDaniel

Team's "Round Tuit" List (cont)

1. Tort Claims Liability/Accident Reports
2. Bid Item for On-site Overhead
3. Disputes Review Boards
4. Joint Training—Documentation
5. Payroll, Wage Administration procedures
6. Materials on Hand provisions
7. Web-Based Construction Management

Attachments:

Standard Specifications 2004

1-08.5 Time for Completion

The Contractor shall complete all physical contract work within the number of “working days” stated in the Contract Provisions or as extended by the Engineer in accordance with Section 1-08.8. Every day will be counted as a “working day” unless it is a nonworking day or an Engineer determined unworkable day.

A nonworking day is defined as a Saturday, a Sunday, a day on which the contract specifically suspends work, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between December 25 and January 1 will be classified as nonworking days.

An unworkable day is defined as a half or whole day the Engineer declares to be unworkable because of weather or conditions caused by the weather, that prevents satisfactory and timely performance of the work on the projects critical path, as defined in Section 1-08.3. Other conditions beyond the control of the Contract may qualify for an extension of time, in accordance with Section 1-08.8.

Contract time shall begin on the first working day following; the 45th calendar day after the date of award or the 21st calendar day after the date of execution, of the contract by the Contracting Agency, whichever is later. Except if the Contractor starts work on the project at an earlier date, then contract time shall begin on the first working day when work onsite begins. The contract provisions may specify another starting date for contract time, in which case, time will begin on the starting date specified.

Each working day shall be charged to the contract as it occurs, until the contract work is physically complete. If substantial completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for the physical completion of the contract; and (3) remaining for the physical completion of the contract. The statement will also show the nonworking days and any half or whole day the Engineer declares as unworkable. If the Contractor disagrees with any statement it shall be protested in accordance with Section 1-04.5.

The Engineer will give the Contractor written notice for the following completion dates as defined in Section 1-01.3, as applicable:

Substantial Completion Date.

Physical Completion Date. That date shall constitute the physical completion date of the contract, but shall not imply the Secretary’s acceptance of the work or the contract.

Completion Date. The following events must occur before the Completion Date can be established:

1. The physical work on the project must be complete; and
2. The Contractor must furnish all documentation required by the contract and required by law, to allow the Contracting Agency to process final acceptance of the contract. The following documents must be received by the Project Engineer prior to establishing a completion date:
 - a. Certified Payrolls (Federal-aid Projects)
 - b. Material Acceptance Certification Documents
 - c. Annual Report of Amounts Paid as MBE/WBE Participants or Quarterly Report of Amounts Credited as DBE Participation, as required by the Contract Provisions.
 - d. FHWA 47 (Federal-aid Projects)
 - e. Final Contract Voucher Certification

WSDOT shall tender to the Contractor all claims filed against the State pursuant to RCW 4.92.100 that are deemed to have arisen in relation to the Contractor's work or activities pursuant to this contract, and, in the opinion of WSDOT, are subject to the defense, indemnity, and insurance provisions of these Standard Specifications (Secs 1-07.14 et seq.). Claims shall be deemed tendered to the Contractor and insurer, who has named the State as a named insured or an additional insured under the contract's insurance provisions, once the claim has been forwarded via United States Postal Service (USPS) to the Contractor. The Contractor shall be responsible to provide a copy of the claim to the Contractor's designated insurance agent who has obtained/met the contract's insurance provision requirements.

Within seventy (70) days of following the date a claim is sent by WSDOT to the Contractor, the contractor shall notify the Claimant and WSDOT (Risk Management Office, PO Box 47418, Olympia, WA 98504-7418) of the following:

- a. whether the claim is allowed or is denied in whole or in part, and, if so, the specific reasons for the denial of the individual claim, and if not denied in full, when payment has been or will be made to the claimant(s) for the portion of the claim that is allowed, or
- b. if resolution negotiations are continuing. In this event, status updates will be reported no longer than every 60 days until the claim is resolved or lawsuit is filed.

If the Contractor fails to provide the notification to either WSDOT or the claimant, or both, within seventy (70) days, as provided in this section, then the Contractor shall yield to WSDOT sole and exclusive discretion to allow all or part of the claim on behalf of the Contractor, and the **Contractor shall be deemed to have WAIVED any and all defenses, objections, or other avoidances to WSDOT's allowance of the claim, or the amount allowed by WSDOT**, under common law, constitution, statute, or the contract and these Standard Specifications. If WSDOT allows all or part of a claim, WSDOT shall notify the Contractor via USPS that it has allowed all or part of the claim and make appropriate payments to the claimant(s) with State funds.

Payments of State funds by WSDOT to claimant(s) under this section will be made by WSDOT on behalf of the Contractor and at the expense of the Contractor, and the Contractor shall be unconditionally obligated to reimburse WSDOT for the "total reimbursement amount", which is the sum of amount paid to the claimant(s), plus an additional 10 per cent of the amount paid to the claimant(s) in consideration for WSDOT's administration and payment of the claim on the contractor's behalf. WSDOT shall be authorized to withhold the total reimbursement amount from progress payments or final payments owing to the Contractor under the contract, or, if no further payments are to be made by WSDOT to the Contractor under the contract, the Contractor shall directly reimburse WSDOT for the amounts paid within 30 days of the date notice was sent by WSDOT to the Contractor. In the event reimbursement from the Contractor is not received by WSDOT within 30 days, interest shall accrue on the total reimbursement

Administration Team

Minutes

Page9

amount owing to WSDOT at the rate of 12 per cent per annum calculated at a daily rate.
WSDOT costs to enforce recovery of these amounts are additive to the amounts owing.